



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 7238-99

31 March 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, applied to this Board requesting, in effect, that her naval record be corrected by changing the characterization of service and reason for discharge.

2. The Board, consisting of Messrs. Pfeiffer, Caron, and Ms. LeBlanc reviewed Petitioner's allegations of error and injustice on 29 March 2000, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 1 August 1980 for four years as an SN (E-3). At that time, she extended her

enlistment for an additional period of 24 months for training in the advanced electronics field and accelerated advancement to pay grade E-4. She acknowledged that if she accepted accelerated advancement to E-4, she would be obligated to serve 12 months of this additional service, whether or not she completed advanced training. The record reflects that she completed BE&E school and Phase I of ET/A school on 1 July 1981 and was advanced to ET3 (E-4). However, on 31 July 1981, she was dropped from Phase II training for academic reasons and executed a new 12-month extension agreement which stated:

"I understand that, as a result of accepting accelerated advancement to pay grade E-4 on 1 July 1981 and payback for advanced training received in accordance with BUPERSMAN 1050300 this extension is binding and may not be cancelled."

d. Petitioner served without incident until 29 January 1982 when she received a nonjudicial punishment (NJP) for a two day period of unauthorized absence. Punishment imposed consisted of a forfeiture of \$25 and 10 days of restriction and extra duty.

e. On 30 March 1983, an NIS agent interviewed an ET2 D, Petitioner's supervisor, regarding her knowledge of any homosexual activity by Petitioner. ET2 D provided a written statement to the effect that Petitioner had spoke to her three times about a "love" relationship, and appeared to be looking for guidance in her personal affairs. The fourth time, Petitioner intimated that her relationship was not with a male. ET2D then reported Petitioner's admission to CWO4 M. On 27 April 1983, an NIS agent interviewed CWO4 M, who stated that approximately a year and a half ago ET2 D advised him that Petitioner had confided to her that she was a "lesbian" and he jokingly replied "you didn't know." CWO4 M also said that he intuitively felt she was homosexual, and stated that she had confided in him that she never had sexual intercourse.

f. On 5 April 1983, a confidential source reported to a Naval Investigative Service (NIS) agent that Petitioner admitted to her that she was homosexual and had been involved in a homosexual relationship with her current roommate, PN1 P. The unnamed source also stated she was involved in a homosexual relationship with Petitioner's former roommate, ET3 C. However, the source was unwilling to provide a written statement or

testify. A DP3 T was also implicated by the confidential source as being involved in homosexual activities with Petitioner.

g. Both DP3 T and Petitioner, when questioned by NIS invoked their right to remain silent.

h. On 20 April 1983, Petitioner was notified that discharge under other than honorable conditions was being considered by reason of homosexuality. She was advised of her procedural rights and, after consulting with counsel, elected to present her case to an administrative discharge board (ADB). She appeared before an ADB with counsel on 20 June 1983. Petitioner's counsel objected to the NIS reports being entered into evidence because they were based on hearsay. Counsel especially objected to the ADB's consideration of the statement by the confidential source. Counsel considered these comments unreliable and noted Petitioner had no opportunity for cross-examination.

i. However, the NIS reports were admitted in evidence. The ADB heard testimony from Petitioner's department head, LCDR B, that he had counseled her about a drinking problem. He also stated that ET2 D made an accusation that Petitioner was homosexual and wanted him to do something about it. When he checked into the matter, he found that NIS was already investigating Petitioner. CWO4 M testified that he did not doubt that ET2 D believed that she heard Petitioner admit to being a homosexual. He also stated that Petitioner believed her drinking problem was partially due to her unproductive relationships with men, and said that his "gut reaction" was that she had homosexual tendencies. However, he never saw her in a situation that would indicate she was homosexual. When questioned about ET2 D, he stated that she was emotional, which was probably a contributing factor in her divorces.

j. ET3 C, ET2 K, SK1 P, PN1 P, and DP2 T all testified they did not believe she was homosexual, never saw her engage in any homosexual activity, or told any one of them that she was homosexual.

k. Petitioner testified that she never engaged in homosexual acts, and did not desire to or intend to engage in such acts. She believed that ET2 D accusations against her was because she was aware of things that ET2 D did on the job that she should not do, such as going to the exchange or the bank

when she was supposed to be working. She asserted that ET2 D was trying to make her look bad or discredit her integrity. Petitioner asserted that she never told ET2 D that she was homosexual or that she was interested in another female. She claimed that she told ET2 D that she was seeing a man she met while working in the barracks. She admitted at one time she wanted out of the Navy and made a statement "I'll even say that I'm a homosexual to get out", but dropped the idea when she found out that she would have to prove that she was homosexual. She asserted that she should not be processed based on accusations without substantiating proof.

1. By a vote of three to zero, the ADB found that Petitioner had engaged in or had attempted to engage in homosexual activities and recommended that she be discharged by reason of homosexuality with a general discharge.

m. On 21 June 1983, the commanding officer concurred with the ADB findings and recommended a general discharge. On 7 July 1983, Commander Naval Military Personnel Command directed separation by reason of homosexuality with type of discharge warranted by the service. Petitioner received a general discharge on 29 July 1983.

n. Character of service is based, in part, on military behavior and overall traits averages which are computed from marks assigned during periodic evaluations. Petitioner's military behavior and overall traits averages were 3.3 and 3.44, respectively. The minimum average marks required for a fully honorable characterization at the time of her discharge were 3.0 in military behavior and 2.7 in overall traits.

o. If a discharge is found to be improper, the corrective action should show that the individual completed his or her enlistment.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board initially notes Petitioner had only one minor disciplinary infraction in nearly three years of service and her military behavior and overall traits averages were sufficiently high to warrant a fully honorable discharge.

After a thorough review of the NIS investigation and the ADB proceedings, the Board found the proceedings to be deficient in that there is no substantive evidence to support the accusation that Petitioner was homosexual. The Board noted that NIS initiated its investigation based on an allegation made by a confidential source whose identity was never revealed to the ADB and who apparently was an admitted homosexual. The Board does not believe that an individual who will not reveal his or her identity is worthy of belief, absent very substantial corroboration. Further, Petitioner was denied her right and opportunity to cross-examine both this source and ET2 D. The Board also concluded that the statement of ET2 D lacks reliability. In this regard, CWO4 M described her as emotional, and she apparently had a motive to falsely implicate Petitioner in homosexual behavior. Additionally, the confidential source alleged that Petitioner was involved in a homosexual relationship with ET3 C, Petitioner's former roommate. However, ET3 C testified at the ADB and denied this allegation.

Accordingly, the Board concludes that it would be appropriate and just to correct the record to show that Petitioner was not discharged on 29 July 1983 but continued serve until 31 July 1985 when her enlistment as extended would have expired, and on that date she was honorably discharged and assigned an RE-1 reenlistment code.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that she was not discharged on 29 July 1983 by reason of homosexuality but continued to serve until she was honorably discharged on 31 July 1985, by reason of expiration of her enlistment, and was assigned an RE-1 reenlistment code vice the general discharge and RE-4 reenlistment code as now shown on her DD Form 214. This corrective action should include the issuance of a new DD Form 214.

b. That the record be further corrected by removing all documentation pertaining to the administrative separation action (microfiche images 1338-1348).

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross references being made a part of Petitioner's naval record.

f. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 22 November 1999.

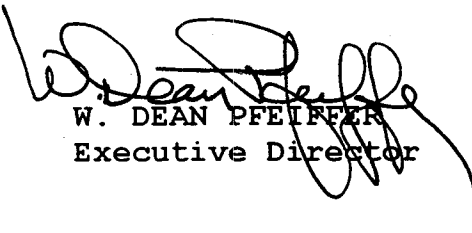
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director